

I-120

CENTRAL INTELLIGENCE AGENCY
Washington, D. C.

ADMINISTRATIVE INSTRUCTION

23 August 1948

STATINTL NO.

SUBJECT: Loyalty Board and Loyalty Adjudication Procedure.

1. The regulations and directives duly promulgated by and under the authority of the Loyalty Review Board, in accord with the provisions of Executive Order 9835, as set forth in Titles 5, Chapter II, of the Code of Federal Regulations (13 F.R. 253), constitute the basic and controlling regulations to govern all loyalty adjudication procedures in the Central Intelligence Agency.

2. a. A Loyalty Board is established for the Central Intelligence Agency to adjudicate all loyalty cases arising in the Agency. It shall be composed of at least three members selected from among the following:

Executive Director	- Chairman
Any two of the following to be named by the Chairman for each case:	
Assistant Directors	- Members
Deputy Assistant Directors	

No Assistant Director or Deputy Assistant Director shall be named as a member of a Loyalty Board convened to consider the case of an individual assigned to his office.

b. In addition, the Board shall be attended by:

General Counsel or Assistant General Counsel	- Legal advisor and recorder without vote
Executive for Inspection and Security	- Advisor without vote

3. a. The Agency shall not suspend any employee until after a determination of an unfavorable nature (subsequent to the serving of a notice of proposed removal action and reply, if any, and hearing, if held) has been made by the Loyalty Board of the Agency, except when the circumstances are such that the employee's retention in an active duty status might result in possible compromise of classified information to the detriment of the national security, in damage to Government property, would be otherwise detrimental to the interest of the Government, or would be otherwise injurious to the employee, his fellow workers, or the general public, or the

DOC 2.2	REV DATE 12/09/80	BY 018995
ORIG SCMP 10	OPI 3	TYPE 11
ORIG CLASS M	PAGES 07	REV CLASS 11
JUST	NEXT REV	AUTH: NA 10-2

(18)

employee cannot be temporarily assigned to duties in which these conditions would not exist. In such exceptional cases, the employee shall be placed on annual leave provided that he has sufficient annual leave to his credit; otherwise, he shall be suspended for such period or periods as the circumstances warrant.

b. If the determination by the Loyalty Board (subsequent to the serving of a notice of proposed removal action and reply, if any, and hearing, if held) is that removal action is warranted under Section 9A of the Hatch Act (Act of August 2, 1939, 18 U.S.C. 61(1)), the employee shall be suspended immediately pending the decision of the Head of the Agency on appeal. If the decision of the Head of the Agency is that the employee has violated the provisions of Section 9A, the employee shall be immediately removed.

4. In cases not seriously threatening national security, the CIA Loyalty Board, with the approval of the Director, after hearing and determination of an unfavorable nature, if mitigating circumstances are found, may permit resignation instead of recommending suspension or removal. In case of such resignation, immediate notice shall be given to the Civil Service Commission, accompanied by the complete file of the case.

5. The standard for the refusal of employment or the removal from employment in the Central Intelligence Agency on grounds relating to loyalty under Executive Order 9835 shall be that, on all the evidence, reasonable grounds exist for belief that the person involved is disloyal to the Government of the United States. The decision shall be reached after consideration of the complete file, arguments, briefs and testimony presented.

6. Whenever a report is received which tends to cast any doubt on the loyalty of an employee, it shall be referred for consideration to the CIA Loyalty Board which shall take action in each case by majority vote of the members.

a. The Board shall examine the report of investigation and may request further investigation if such action appears to be necessary. Whenever practicable, such request shall be specific as to the additional information required.

b. If the Board deems it advisable or necessary to obtain information or clarification of certain matters from an individual whose case is before the Board, prior to reaching a conclusion as to whether the case should be closed favorably, whether charges should be made, or further investigation should be requested from the Federal Bureau of Investigation, the individual may be given the opportunity, if he so desires, to answer questions by written interrogatories issued by the Board, but not otherwise.

7. When satisfied that it has before it all available information, the Board shall consider the record in the light of the standard as set forth in paragraph 5 above and shall determine whether such information warrants a finding clearly favorable to the individual or appears to call for further processing of the case with a view to possible removal action.

At this point, the Board shall also determine whether the employee should be suspended in accordance with the exceptions indicated in paragraph 3, above.

8. If the Board reaches a clearly favorable conclusion, it shall so determine and recommend to the Director of Central Intelligence that favorable action be taken.

9. If the Board determines that such reports do not warrant a finding clearly favorable to the individual, the procedures set forth herein shall be followed:

a. In all cases in which the evidence indicates that removal action may be warranted, the Board shall serve the employee with a notice in writing stating the charges against him in factual detail, setting forth with particularity the facts and circumstances relating to the charges so far as security considerations will permit, in order to enable the employee to submit his answer, defense or explanation, of the proposed removal action. This notice shall be given to the employee at least 30 calendar days in advance of the effective date of the proposed removal action, except as provided on pages 31-13 of the Federal Personnel Manual.

b. The notice of proposed removal action required by paragraph 9a above, shall state to the employee:

(1) The charges against him in factual detail, setting forth with particularity the facts and circumstances relating to the charges so far as security considerations will permit, in order to enable the employee to submit his answer, defense or explanation.

(2) His right to answer the charges in writing, under oath or affirmation, within a specified reasonable period of time, not less than 10 calendar days from the date of the receipt by the employee of the notice.

(3) His right to have an administrative hearing on the charges before the CIA Loyalty Board, upon his request.

(4) His right at his own expense to appear before such Board personally, to be represented by counsel or representative of his own choosing, and to present evidence in his behalf.

(5) The work and pay status in which he will be carried during the period of the notice and until the determination of the CIA Loyalty Board.

(6) The fact that the proposed removal action will not become effective in less than 30 calendar days from the date

of receipt by the employee of the notice.

(7) The authority or authorities (Executive Orders and any applicable statutes) under which the notice is being sent.

(8) The employee should be reminded that security restrictions are still applicable relative to any discussions on his part with counsel or other individuals not regularly employed by CIA.

(9) Notice of charges will, wherever possible, be handed personally to the employee by a member of the Board. Where this is not feasible, the notice will be sent by registered mail, with return receipt requested, to the home address of the employee. Notice to employees abroad will be dispatched by appropriate means.

10. After giving the employee the foregoing notice, the Board shall proceed as follows:

a. If the employee does not reply to the notice within the time specified by the notice, the Board shall consider the case on the complete file and recommend action to the Director.

b. If the employee answers the charges in writing but does not request a hearing, the Board shall then consider the case on the complete file (including such answer) and recommend action to the Director.

c. If the employee requests a hearing before the Board, a time and place for such hearing shall be set by the Board, as convenient to the employee as circumstances permit, and he shall be allowed a reasonable time to assemble his witnesses and prepare his defense. This hearing shall be conducted in accordance with the provisions set forth below.

(1) The hearings will begin with the reading of the order for the convening of the Board, the letter of charges, and interrogatories if any.

(2) The employee shall thereupon be informed of his right to participate in the hearing, to be represented by counsel or other representative of his own choosing, and to present witnesses in his behalf.

(3) Strict legal rules of evidence shall not be applied at the hearings, but reasonable bounds shall be maintained as to competency, relevancy and materiality.

(4) Testimony shall be given under oath or affirmation, which shall be administered by the Chairman of the Board.

(5) Both the Government and the employee may introduce such evidence as the Board may deem proper in the particular case. However, the Government need not divulge confidential sources of information. The Board shall take into consideration the fact that the employee may have been handicapped in his defense by the non-disclosure to him of confidential information or by the lack of opportunity to cross-examine persons constituting such sources of information.

(6) The Law Member shall be responsible for advising the Board of any action of the Board which might infringe upon an employee's constitutional rights. The Law Member may report to the Director any action of the Board which, in his opinion, is an infringement of such rights.

11. Testimony at the hearing shall be recorded and transcribed and shall be made a permanent part of the record in the case. The transcript shall include a copy of the charges and of the interrogatories, if any. Whenever possible, the testimony shall be taken verbatim and shall be transcribed. The employee personally or by his counsel or representative shall be entitled to inspect the transcript and, upon request, shall be furnished with a copy of the transcript. Reporting of testimony given at hearings shall be done by a person or persons designated by the Board. No other transcripts shall be made.

12. Hearings shall be private and the following rules will be observed to protect the employees concerned:

a. Attendance shall be limited to representatives of CIA who are directly connected with the adjudication of the case, the employee concerned, his counsel or representative, witnesses called to testify, and representatives of the Loyalty Review Board.

b. Files and deliberations of the Board shall be kept confidential, and all records, documents, and evidence not the property of the employee shall be forwarded to the Executive for Inspection and Security for disposition except as is necessary for forwarding such material to the Civil Service Commission in compliance with the applicable provisions of this instruction.

c. If the determination of the Board is favorable to the employee, the Executive for Inspection and Security shall retain the entire file with the security files on the individual concerned. The Civil Service Commission shall be informed of such favorable determination.

d. If the determination of the Board and the Director is unfavorable to the employee, and the latter does not exercise his right of appeal to the Loyalty Review Board, the Agency shall forward the notice of dismissal and the file in the case to the Civil Service Commission.

e. All material forwarded to the Civil Service Commission in connection with loyalty procedures shall be subject to the provision of Section 102(d)(3) of the National Security Act of 1947 (Public Law 253 - 80th Congress) that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure.

13. After the provisions of paragraph 10 above, have been complied with, the Board shall promptly make its determination, which shall be set forth in writing and shall be signed by the members of the Board. It shall state the action taken and shall be made a permanent part of the file in every case.

14. When the Board has reached a determination after charges have been made, the Board shall serve a notice to that effect in writing on the employee. If the determination is unfavorable, the notice shall also inform the employee that he has a right to appeal from the Board's action to the Director of Central Intelligence, and shall inform him of the procedure to be followed in making the appeal. A specified reasonable period of time, not less than 10 calendar days from the date of receipt by the employee of the notice of the determination, shall be allowed the employee to appeal.

If the employee does not appeal from the determination, the Board shall transmit its determination to the Director.

15. The Director of Central Intelligence shall have the right, in hearing on appeal, to fix the scope and extent of such hearing but, in all cases, the employee shall have the right to be present with his attorney or representative and to be heard therein. In all such hearings, the provisions of paragraph 10, above, shall govern, so far as practicable within the scope of the hearing as fixed by the Director. The Director shall inform the employee of his decision on the appeal. If the decision is unfavorable to the employee, the Director will notify him of his right to appeal to the Loyalty Review Board and the procedure to be followed.

16. a. If an employee appeals to the Loyalty Review Board of the Civil Service Commission, the appeal must be filed in writing within 20 calendar days after the receipt of the notice by the employee of the final decision by the Director of Central Intelligence in the case of persons living within the continental limits of the United States, and within 30 calendar days in the case of persons living outside the continental limits of the United States.

b. Notice of appeals of employees shall be sent to the Loyalty Review Board, United States Civil Service Commission, Washington 25, D. C.

c. If an employee sends notice of an appeal to the Loyalty Review Board of the Civil Service Commission, he shall forthwith give simultaneous notice thereof to the Director of Central Intelligence.

d. In case of such appeal, the Agency shall forward the file in the case in triplicate to the Review Board, unless that Board agrees that a single copy is adequate.

17. With the concurrence of the Executive Secretary of the National Security Council, the CIA Loyalty Board will also act upon any loyalty cases which may arise among personnel of his office. In such cases, the Executive Secretary of the National Security Council will take the action prescribed herein for the Director of Central Intelligence.

STATINTL

18. These instructions rescind or supersede any provisions of previously issued instructions with respect to loyalty adjudication procedure. They do not rescind or supersede in any way the provisions of [redacted] subject "Employment Review Board and Procedures".

STATINTL

[redacted]
R. H. HILLENKOETTER
Rear Admiral, USN
Director of Central Intelligence

DISTRIBUTION: ALL CIA EMPLOYEES